American Forest & Paper Association

May 28, 2019

(Via email to Brian Nickel)

U.S. EPA Region 10
Attn: Director, Office of Water and Watersheds
1200 Sixth Avenue, Suite 155 (OWW-191)
Seattle, Washington, 98101

Re: AF&PA Comments on Proposed Wastewater Act Permit for Clearwater Paper Corporation (Permit Number ID0001163)

To Whom it May Concern:

The American Forest & Paper Association (AF&PA) appreciates the opportunity to comment on the proposed Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) wastewater permit (Proposed Permit) for Clearwater Paper Corporation (Clearwater), an AF&PA member. The Proposed Permit raises two potentially precedential issues discussed below for Clearwater and our other members. Based on the foregoing, AF&PA has a direct interest in this rulemaking. In addition, we incorporate by reference Clearwater 's comments on those issues.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative - *Better Practices, Better Planet 2020*. The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly $300 billion in products annually and employs approximately 950,000 men and women. The industry meets a payroll of approximately $55 billion annually and is among the top 10 manufacturing sector employers in 45 states.

AF&PA's sustainability initiative - *Better Practices, Better Planet 2020* - comprises one of the most extensive quantifiable sets of sustainability goals for a U.S. manufacturing industry and is the latest example of our members' proactive commitment to the long-term success of our industry, our communities and our environment. We have long been responsible stewards of our planet's resources. We are proud to report that our members already achieved our first greenhouse gas reduction goal and are close to achieving the second. They also already achieved the workplace safety goal. Our member companies have also collectively made significant progress in each of the

following goals: increasing paper recovery for recycling; improving energy efficiency; promoting sustainable forestry practices; and reducing water use.

Mandated Use of Method 1668(C) for Analysis of PCBs.

AF&PA has been actively participating in EPA's deliberations over analytical methods for PCBs and other pollutants for over a decade. AF&PA, as part of a coalition, filed comments on EPA's "Sufficiently Sensitive" rulemaking in 2010, as well as EPA's proposal the same year to add Method 1668(C) to 40 CFR Part 136. In those and other rulemakings we consistently cautioned that as water quality standards become more and more stringent and get closer to background levels, the ability of analytical methods to accurately identify and quantify pollutants at those levels becomes more questionable, especially for ubiquitous pollutants, such as PCBs.

As EPA has acknowledged in the Fact Sheet for the Proposed Permit, Method1668(C) is not an approved method. EPA had proposed to add the method to Part 136, however, it did not do so on May 18, 2012, when it issued its final rule approving other test methods. At that time, the agency acknowledged many of the deficiencies in the interlaboratory study and other scientific issues that the coalition and other commenters had raised. Further, while the Fact Sheet for the Proposed Permit states that "[m]ethod 1668(C) is the *most sensitive method available*, and it analyzes for nearly all the 209 individual congeners," (Fact Sheet, page 3)(emphasis added), EPA's final "Sufficiently Sensitive" rulemaking makes clear that the requirement to use a "sufficiently sensitive" test method applies only to EPA-approved methods. 79 *Fed. Reg*. 490001 (8/19/2014).

EPA undoubtedly is aware that the concerns regarding the use of Method 1668(C) have not diminished. Last year, the Supreme Court of Washington refused to mandate the use of the method in an action brought by environmental groups, noting there are questions about the reliability of the method. *Puget Soundkeeper v. Department of Ecology,* 424 P.3d 1173 (Wash. 2018):

> "Method 1668C is unreliable because that test does not allow Ecology to determine whether any of the PCBs detected comes from the discharges, the test container itself or the ambient air. This means that the test would detect the presence of PCBs but would not identify the source." *Id.* at 1178.

The same problems identified in *Puget Soundkeeper* would apply if EPA mandated its use in the final Clearwater permit. Further, several Washington business associations recently filed a lawsuit challenging Washington Department of Ecology's 2018 Permit Writers Manual requirement for dischargers to use Method 1668(C) for PCBs in effluent "for conducting reasonable potential analyses, deriving water quality based effluent limitations, and in establishing technology based effluent limitations," purposes similar to those for which EPA intends to use the PCB data collected for the Proposed Permit.

Their Petition for Review[1] raises valid concerns with the Method, citing the same language from the *Puget Soundkeeper* case quoted above.

As Clearwater's comments demonstrate, EPA has not justified its mandated use of Method 1668(C), nor adequately explained why Clearwater is being singled out for this requirement. EPA previously acknowledged the flaws in the Method when it decided against approving it, and similar flaws were recently highlighted in the *Puget Soundkeeper* decision. Accordingly, EPA should remove the mandate to use the Method in the Proposed Permit. Instead, the agency should allow Clearwater to work with Idaho Department of Environmental Quality (DEQ) to develop a technically sound monitoring plan, when DEQ takes over the permitting process.

Mixing Zone Requirements

AF&PA also has been actively involved in the development of Human Health Water Quality Criteria (HHWQC) for several years. As part of the Federal Water Quality Coalition, we filed extensive comments on the draft 2000 Human Health Methodology. AF&PA and the coalition also filed detailed comments on EPA's draft update of 94 HHWQC issued in 2015. We have actively engaged as states around the country have considered revising their HHWQC to potentially incorporate the updated criteria, ultimately filing comments in 17states. Among others, we filed comments supporting Idaho's HHWQC that EPA recently approved and that are the basis for the permit limits in the Proposed Permit.

Our experience with the *development* of HHWQC has educated us about some of the issues that will need to be confronted with the *application* of those criteria in permits. The Proposed Permit is the first of which we are aware that attempts to translate updated HHWQC (i.e., the recently-approved Idaho HHWQC) into permit limits, and thus could establish a significant precedent for the rest of the country. As discussed below, we do not support the direction EPA appears to be heading.

Clearwater's comments to Idaho Department of Environmental Quality and the material supporting those comments provide a detailed discussion of the concern with EPA's approach to mixing zones and HHWQC. The concerns, however, can be boiled down to the simple principle that the mixing zone and dilution assumptions in permit derivation should reflect the exposure assumptions underlying the HHWQC themselves.

HHWQC criteria are developed under the assumption of long-term exposures. Specifically, for carcinogens, it is assumed that the same exposure occurs every day for seventy years. For non-carcinogens, chronic exposures are used—those that represent 10% or more of an organism's lifetime or 7 or more years (10% of 70 years).

[1] *Northwest Pulp & Paper Association et al. v. Washington Department of Ecology*, Thurston County Superior Court.

It would be inconsistent with these assumptions to derive permit limits using limited mixing zones or dilution factors that represent limited zones. Over 70 years (or 7 or more years for non-carcinogens), it is very unlikely that a person will fish or contact water only within the mixing zone (and that fish will confine themselves to the same zone). To be consistent with the HHWQC exposures assumptions, HHWQC permit limits should be based on the concentration of a pollutant in the entire river flow, which is best represented by the annual harmonic mean. In addition, using the annual harmonic mean would be consistent with the recently approved Idaho HHWQC. To retain a dilution factor based on a limited mixing zone as in the Proposed Permit, would unnecessarily add another layer of conservatism on top of the compounded conservatism underlying HHWQC derivation

Thank you for the opportunity to comment on the Proposed Permit. For the reasons stated above, the requirements to use Method 1668(C) and the mixing zone requirements should be removed from the Permit and modified as suggested above. If you have any questions, please contact me at (202) 463-2581 or jerry_schwartz@afandpa.org.

Sincerely,

Jerry Schwartz
Senior Director
Energy & Environmental Programs

cc:
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